

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OWEN W. BARNABY,

Plaintiff,

No. 22-cv-01146

v

HON. ROBERT J. JONKER

MICHIGAN STATE GOVERNMENT,  
HON. GRETCHEN WHITMER GOVERNOR  
OF MICHIGAN, HON. JENNIFER  
GRANHOMLM GOVERNOR OF MICHIGAN,  
HON. RICK SNYDER GOVERNOR OF  
MICHIGAN, SUPREME COURT OF  
MICHIGAN, STATE BAR OF MICHIGAN,  
KENDELL S. ASBENSON (P81747),  
MICHIGAN ATTORNEY GENERAL DANA  
NESSEL, CITY OF BENTON HARBOR,  
NILES CHARTER TOWNSHIP, BOARD OF  
TRUSTEES OF NILES CHARTER  
TOWNSHIP, BERRIEN COUNTY  
GOVERNMENT, BERRIEN COUNTY  
BOARD OF COMMISSIONERS, BRET  
WITSKOWSKI TREASURER OF BERRIEN  
COUNTY, KATHLEEN CULBERSON  
NOTARY PUBLIC OF BERRIEN COUNTY,  
TITLE & INSURANCE COMPANY(s),  
ATTORNEY DONNA B. HOWARD,  
ATTORNEY MCKINLEY R. ELLIOTT,  
ATTORNEY JAMES MCGOVERN,  
ATTORNEY JEFFREY R. HOLMSTROM,  
HOLMSTROM LAW, PLC,

MAG. SALLY J. BERENS

Defendants.

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**JOINT STATE DEFENDANTS' AND THE CITY OF BENTON HARBOR'S  
EMERGENCY MOTION TO EXTEND TIME FOR RESPONSIVE MOTIONS –  
EXPEDITED CONSIDERATION REQUESTED**

Joint State Defendants and the City of Benton Harbor move this Court for an extension of time to respond to Plaintiff's Motion to Amend the Complaint and to reply to Plaintiff's response to the pending Motion to Dismiss pending the Court's ruling on Plaintiff's objections to its Report and Recommendation for Dismissal for the reasons stated in their brief.

Respectfully submitted,

/s/ Kimberly K. Pendrick

Kimberly K. Pendrick  
Assistant Attorney General  
Attorney for State Defendants  
Michigan Department of Attorney General  
Civil Rights and Election Div.  
3030 W. Grand Blvd., 10<sup>th</sup> Floor  
Detroit, MI 48202  
pendrickk@michigan.gov  
P60348

/s/ Thomas J. Rheume, Jr. (w/permission)

Thomas J. Rheume, Jr. (P74422)  
Attorney for Defendant City of Benton Harbor  
Bodman PLC  
6th Floor at Ford Field  
1901 St. Antoine St.  
Detroit, MI 48226  
[trheume@bodmanlaw.com](mailto:trheume@bodmanlaw.com)

Dated: January 20, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such to all counsel of record.

/s/ Kimberly K. Pendrick  
Kimberly K. Pendrick (P60348)  
Assistant Attorney General  
3030 W. Grand Blvd., Ste 10-666  
Detroit, MI 48202  
(313) 456-0200

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HOLMSTROM LAW, PLC,

MAG. SALLY J. BERENS

Defendants.

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**BRIEF IN SUPPORT OF JOINT STATE DEFENDANTS' AND THE CITY OF  
BENTON HARBOR'S EMERGENCY MOTION TO EXTEND TIME FOR  
RESPONSIVE MOTIONS -  
EXPEDITED CONSIDERATION REQUESTED**

Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure provides that the Court may, for good cause, grant an extension of time. Joint Defendants seek an extension of time to respond to Plaintiff's Motion to Amend the Complaint and to reply to Plaintiff's response to the pending Motion to Dismiss pending the Court's ruling on Plaintiff's objections to its Report and Recommendation for Dismissal.

Of significance, on December 14, 2022, Magistrate Sally Berens issued a Report and Recommendation for Dismissal due to lack of subject matter jurisdiction because Plaintiff's claims are barred by "claim and issue preclusion" and "devoid of merit." (ECF No. 16, Report and Recommendation, PageID.9-18.) Plaintiff's objections are due on or before January 25, 2023, pursuant to an extension granted by the Court. (ECF No. 47, Order, PageID.294.)

After the Report and Recommendation for Dismissal was issued, Plaintiff filed a Motion to Amend for Extension of Time to Amend his Second Amended Complaint. (ECF No. 37, Motion, PageID.266.) The deadline to respond to the motion is today, January 20, 2023.

Further, a Motion to Dismiss by State Defendants was filed on December 19, 2022. (ECF No. 19.) Plaintiff filed a response on January 17, 2023, for which a reply is currently due on January 31st. (ECF No. 50.) Bryan Beach has transferred within the Department of Attorney General and is no longer handling this matter, and Ms. Pendrick herein is filing a substitution of counsel. Finally, if the Court were to adopt the Report and Recommendation in its entirety, Plaintiff's complaint would be dismissed and the pending motions would be moot. In the interest of

conserving resources, responses to those motions should be delayed until a decision on the Report and Recommendation is made.

**RELIEF REQUESTED**

For these reasons, Joint Defendants herein seek an extension of time to respond to Plaintiff's Motion to Amend the Complaint until 14 days after the Court rules on the objections to its Report and Recommendation for Dismissal.

State Defendants and the City of Benton Harbor seek an extension to reply to Plaintiff's response to their Motion to Dismiss until 14 days after the Court rules on the objections to the Report and Recommendation for Dismissal.

Respectfully submitted,

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Kimberly K. Pendrick  
Assistant Attorney General  
Attorney Defendants State of Michigan,  
Whitmer, Granholm, Snyder, Michigan  
Supreme Court, Asbenson & Nessel  
Michigan Department of Attorney General  
Civil Rights and Election Div.  
3030 W. Grand Blvd., 10<sup>th</sup> Floor  
Detroit, MI 48202  
pendrickk@michigan.gov  
P60348

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Thomas J. Rheaume, Jr. (P74422)  
Attorney for Defendant City of Benton Harbor  
Bodman PLC  
6th Floor at Ford Field  
1901 St. Antoine St.  
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